IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 295 OF 1999

WITH

CIVIL APPLICATION NO. 4781 OF 1999

D. A. Mhatre ..Appellant

versus

Laxman N. Lavate, deceased
through his legal heirs
A. N. Lavate & ors. ..Respondents

Mr. N. B. Shah for the Appellant.
Mr. P. S. Dani for Respondent Nos.1(a) to 1(d).

CORAM : D. G. DESHPANDE,J.

DATE : 9TH JUNE, 2005

P.C. :

1. Heard learned counsel for the appellant and Respondent Nos. 1(a) to 1(d).

2. Appellant is the original defendant against whom a decree for eviction is passed by the trial court under Section 106 of the Transfer of Property Act and confirmed by the appellate court.

3. Counsel for the appellant contended that tenancy month commences on 18th of grogorian calendar and notice of termination on 18.3.1999 terminated the tenancy from 30.4.1999. This

according to him was not proper and legal notice because the tenancy terminated in the midst of the month. He brought to my notice the agreement between the parties in that regard "Exhibit 37" and tried to contend from this agreement that it can be said that month of tenancy to commence from 18th of every month.

4. Though the agreement does not at all say that the month of tenancy was to commence from 18th of month though the agreement is dated 18th October. When there is no agreement in between the parties then under the Transfer of Property Act tenancy month for such purpose commences on 1st. Secondly, Mr. Dani pointed out that such a plea of tenancy month commenced from 18th was not raised by the defendant in his written statement. In view of these facts, there is no merit in this appeal. The same is dismissed along with Civil Application.

9.06.2005 (D.G. DESHPANDE, J.)